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**Zoning Case No. C14-2007-0087**

**RESTRICTIVE COVENANT**

**OWNER:** Austin Ly and Nguyen, L.P., a Texas limited partnership

**ADDRESS:** 8115 Altoga Drive, Austin, Texas 78724

**CONSIDERATION:** Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

**PROPERTY:** An 18.97 acre tract of land, more or less, out of the Alexander Walters Survey No. 67, Travis County, the tract of land being more particularly described by metes and bounds in Exhibit "A" incorporated into this covenant

WHEREAS, the Owner of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

1. A site plan or building permit for the Property may not be approved, released, or issued, if the completed development or uses of the Property, considered cumulatively with all existing or previously authorized development and uses, generate traffic that exceeds the total traffic generation for the Property as specified in that certain Traffic Impact Analysis ("TIA") prepared by Robert J Halls & Associates, dated June 30, 2007, or as amended and approved by the Director of the Watershed Protection and Development Review Department ("Director"). All development on the Property is subject to the recommendations contained in the memorandum from the Transportation Review Section of the Watershed Protection and Development Review Department, dated October 12, 2007, and attached as Exhibit "B" to this covenant. The TIA shall be kept on file at the Watershed Protection and Development Review Department
2. A six foot wood privacy fence with masonry columns shall be provided along the east property line. The east property line abuts the residential properties to the east that front Cassat Cove in the Harris Glenn subdivision. A six foot solid privacy fence shall be provided along the north property line that abuts the Harris Ridge subdivision.
3. Prior to site plan approval, a 26-foot wide public access easement and a 30-foot wide public access easement shall be provided between the terminus of Josh Ridge Boulevard and Harris Ridge Boulevard to provide two access points to Harris Ridge Boulevard. Parking is prohibited along the entirety of the access easements unless otherwise approved by the Director.
4. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.

11-8-07 # 110

5. If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.
6. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
7. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the 15<sup>th</sup> day of Nov, 2007.

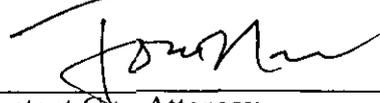
**OWNER:**

**Austin Ly and Nguyen L.P.,  
a Texas limited partnership**

By: Ly and Nguyen Partners, LLC,  
a Texas limited liability company  
its General Partner

By:   
Kevin Nguyen,  
its Authorized Agent

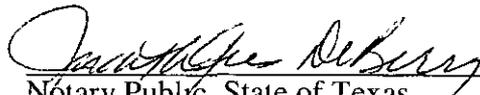
APPROVED AS TO FORM:

  
Assistant City Attorney  
City of Austin

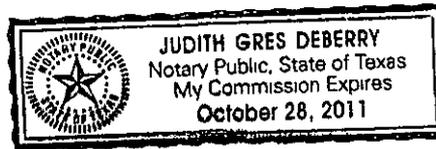
THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 15 day of Nov., 2007, by Kevin Nguyen, as Authorized Agent of Ly and Nguyen Partners, LLC, a Texas limited liability company, General Partner of Austin Ly and Nguyen, L.P., a Texas limited partnership, on behalf of the limited liability company and the limited partnership.

  
Notary Public, State of Texas

After Recording, Please Return to:  
City of Austin  
Department of Law  
P. O. Box 1088  
Austin, Texas 78767  
Attention: Diana Minter, Paralegal



**EXHIBIT "A"**

**BEING A 18.982 ACRE TRACT OF LAND OUT OF THE ALEXANDER WALTERS SURVEY NO. 67, IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THE REMAINDER OF A 149.591 ACRE TRACT AS RECORDED IN VOL. 12038, PG. 1581, REAL PROPERTY RECORDS, TRAVIS COUNTY, TEXAS. SAID 18.982 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:**

**BEGINNING** at a 1/4" iron rod set on the East R.O.W. line of Harris Ridge Boulevard, being the Southwest corner of Lot 1, Block 13, of Harris Ridge, Phase I, Section II, as recorded in Vol. 86, Pg. 125A-125C, Plat Records, Travis County, Texas, also being the Northernmost corner and the **POINT OF BEGINNING** of the herein described tract.

**THENCE** S 48°56'26"E, with the South line of said Lot 1, Block 13, same being a North line of the remainder of said 149.591 acre tract for a distance of 107.00 feet to a 1/4" iron rod set for the Northeast corner of the herein described tract, same being the Northwest corner of Lot 7, Block E, of Harris Ridge, Phase 3, Section 3, as recorded in Vol. 102, Pg. 184, Plat Records, Travis County, Texas, same being the Northwest corner of a called 0.8925 acre tract of land as described in Vol. 12130, Pg. 2405, of the Real Property Records of Travis County, Texas, from which a 1/2" iron rod found at the Northeast corner of said 0.8925 acre tract, same being on the East line of the aforementioned 149.591 acre tract bears S 48°56'26" E, 18.55 feet.

**THENCE** S 24°05'47"W (BEARING BASIS), along the West line of said Block E of Harris Ridge Phase 3, Section 3, passing a 1/2" iron rod found at the common North corner of Lots 6 and 7, Block E of said Subdivision at a distance of 0.92 feet, at 461.60 feet pass a 1/2" iron rod found for the Northwest terminus of Josh Ridge Boulevard and the Southwest corner of Lot 4, Block E, of said Subdivision, at 541.60 feet pass the Southwest Terminus of Josh Ridge Boulevard, same being the Northwest corner of Lot 25A, Amended Plat of Lots 25, 26, and 27, Block A, Harris Ridge Phase 3, Section 3, as recorded in Document No. 200000036, Plat Records, Travis County, Texas, and continuing for a total distance of 1418.10 feet to a capped iron rod found at an angle point of said Lot 25A, for the Southeast corner of the herein described tract.

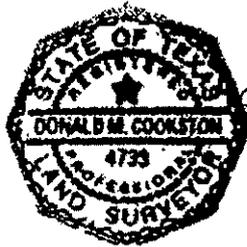
**THENCE** N 60°36'33"W, with the North line of Lots 27A and 26A of said Amended Plat of Lots 25, 26, and 27, Block A, Harris Ridge Phase 3, Section 3, for a distance of 350.46 feet to a 1/2" iron rod found on the curving North right-of-way line of East Farmer Lane (200' R.O.W.) same being the most Westerly corner of said Lot 26A and an angle point in the South line of the herein described tract.

**THENCE** along the Northeast curving line of said East Parmer Lane, being along a curve to the left having a radius of 2009.86 feet, an arc distance of 442.90 feet and a chord that bears N 47°51'40" W a distance of 442.00 feet to a ½' iron rod found for a point of reverse curvature at the intersection of the East line of Harris Ridge Boulevard.

**THENCE** along the East right-of-way line of Harris Ridge Boulevard (90' R.O.W.) the following four (4) courses:

- 1) Along a non-tangent curve to the right having a radius of 25.00 feet, an arc distance of 37.76 feet and a chord that bears N 10°55'39"W a distance of 34.27 feet to a ½ iron rod set at point of tangency.
- 2) N 32°35'51"E for a distance of 359.87 feet to a ½' iron rod set at the beginning of a curve to the right.
- 3) Along said curve to the right having a radius of 1090.59 feet, an arc length of 772.43 feet and a chord that bears N 52°53'16"E a distance of 756.39 feet to a ½' iron rod set at a point of tangency.
- 4) N 73°10'42"E for a distance of 356.07 feet to the **POINT OF BEGINNING** to the herein described tract and containing 18.982 acres of land, more or less.

07/03/06  
J.No.06-0164



*Donald M. Cookston*  
Donald "Matt" Cookston  
Registered Professional Land Surveyor No. 4733

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS

*Dana DeBevoise*

2006 Aug 21 03:33 PM 2006160948

FERGUSONY \$28.00

DANA DEBEVOISE COUNTY CLERK

TRAVIS COUNTY TEXAS

EXHIBIT B



**Date:** October 12, 2007  
**To:** Sherri Sirwaitis, Case Manager  
**CC:** Robert Halls, Robert J. Halls & Associates  
**Reference:** Vina Plaza TIA (12801 Harris Ridge Blvd)\C14-2007-0087

Please note: The TIA was prepared with the assumption that the restrictive covenant requiring the construction of Josh Ridge Blvd was removed from the property. Staff's recommendation on the removal of Josh Ridge Blvd is addressed with case C14-95-0183(RCA) in a separate memo dated October 12, 2007.

The Transportation Review Section has reviewed the Traffic Impact Analysis for the Vina Plaza dated June 30, 2007, prepared by Robert Halls, Robert J. Halls & Associates, and offers the following comments:

**TRIP GENERATION**

Vina Plaza is a 19-acre development located in north Austin just at the intersection of Parmer Lane and Harris Ridge Blvd, just south of Howard Lane.

The property is currently undeveloped and zoned Community Commercial (GR) and Rural Residential (RR). The applicant has requested to change the zoning of the Rural Residential tract (approximately 3.45 acres) to Community Commercial (GR) so that the entire site may be developed as a specialty retail center to include a grocery market and commercial office and retail center. The estimated completion of the project is expected in the year 2009.

Based on the standard trip generation rates established by the Institute of Transportation Engineers (ITE), the development will generate approximately 27,604 unadjusted average daily trips (ADT). The table below shows the adjusted trip generation by land use for the proposed development:

LAND USE	Size	ADT	AM Peak		PM Peak	
			Enter	Exit	Enter	Exit
Retail	83,650 SF	3872	59	38	158	171
Fast Food w/o Drive Thru	19,000 SF	13,604	501	334	254	243
High Turnover Restaurant (Sit-Down)	7,500 SF	591	30	28	28	18
Quality Restaurant	9,000 SF	631	5	2	25	12
Office	9,295 SF	214	25	3	15	74

Bank w/ Drive Through	2,300 SF	300	8	7	28	28
Grocery	60,000 SF	3732	88	56	203	195
<b>Total</b>		<b>22,944</b>	<b>716</b>	<b>468</b>	<b>711</b>	<b>741</b>

**ASSUMPTIONS**

1. Traffic growth rates applied were as follows:

<b>Roadway Segment</b>	<b>%</b>
Parmer Lane	7.0
Harris Ridge Blvd	3.0
Harrisglenn Drive	3.0
Josh Ridge Blvd	3.0
Howard Lane	3.0

2. In addition to these growth rates, background traffic volumes for 2003 included estimated traffic volumes for the following projects:

Howard Lane Industrial Park	SP-03-0385D
1427 Dexford Drive	SPC-05-1022C
Harris Ridge Fire Station	SP-00-2357C
315 E Howard Drive	SPC-05-1022C

3. Reductions were taken for pass-by for the following uses:

<b>Land Use</b>	<b>Pass-By Reductions %</b>	
	<b>AM</b>	<b>PM</b>
Retail	31	41
High Turnover Restaurant	33	43
Grocery Store	26	36
Bank with Drive Through	47	47
Quality Restaurant	0	43

4. No reductions were taken for internal capture.

5. No reductions were taken for transit use.

**EXISTING AND PLANNED ROADWAYS**

**Parmer Lane** – Parmer Lane forms the southern boundary of the subject site. This roadway is currently built as a four lane arterial east of IH-35. The CAMPO 2025 Plan identifies this roadway as a six-lane freeway, by 2025. This expansion construction, however, is not assumed to take place before project build out.

**Harris Ridge Blvd** – Harris Ridge forms the western boundary of the subject site. The roadway is built as a four lane divided arterial north of Parmer Lane. The CAMPO 2025 Plan identifies this roadway as a six-lane arterial, by 2025. This expansion construction, however, is not assumed to take place before project build out.

**Harrisglenn Drive** – Harrisglenn is a neighborhood collector that runs north of Parmer Lane and connects with Josh Ridge Blvd.

**Josh Ridge Blvd** – Josh Ridge is proposed to dead-end at a driveway at the eastern edge of the site. This roadway is built as a four lane divided residential collector. Originally intended as an arterial roadway to connect McCallen Pass to Dessau Road through the subject property, the applicant is requesting the removal of the restrictive covenant requiring the street's construction.

**INTERSECTION LEVEL OF SERVICE (LOS)**

The TIA analyzed 7 intersections, 3 of which are or will be signalized. Existing and projected levels of service are as follows, assuming that all improvements recommended in the TIA are built:

<b>Table 5. PM Peak Level of Service</b>			
<b>Intersection</b>	<b>2007 Existing</b>	<b>2009 Forecasted (Without Site)</b>	<b>2009 Site + Forecasted</b>
Parmer Lane & IH-35 WSR*	D	D	D
Parmer Lane & IH-35 ESR*	F	F	F
Harris Ridge Blvd & Parmer Lane*	B	B	D
Harrisglenn Dr. & Parmer Lane*	A	B	C
Howard Lane & Harris Ridge Blvd.	A	A	A
Josh Ridge Blvd. & Harrisglenn Dr.	A	A	B
Harris Ridge Blvd & Driveway A	-	-	B
Parmer Lane & Driveway B	-	-	C

\* = SIGNALIZED

**RECOMMENDATIONS**

- 1) Prior to 3<sup>rd</sup> reading at City Council, fiscal is required to be posted for the following improvements:

Intersection	Improvements	Total Cost	Pro Rata Share %	Pro Rata Share \$
Parmer Lane & IH-35 WSR	Add a second westbound turn lane	\$2,000	8.8	176.00
Parmer Lane & IH-35 ESR	Add a westbound-through lane	\$3,000	7.0	210.00
Parmer Lane & Driveway B	Install a right-turn/deceleration lane	\$30,000	100	\$30,000
<b>TOTAL</b>		<b>\$35,000.00</b>		<b>\$30,386.00</b>

EB=Eastbound WB=Westbound NB=Northbound SB=Southbound

- 2) Final approval from DPWT ~ Signals and TXDOT is required prior to 3rd Reading.
- 3) Cost estimates for the above improvements should be submitted prior to 3<sup>rd</sup> Reading.
- 4) For information: Two copies of the final version of the TIA incorporating all corrections and additions must be submitted prior to final approval of the zoning case.
- 5) Development of this property should be limited to uses and intensities which will not exceed or vary from the projected traffic conditions assumed in the TIA, including peak hour trip generations, traffic distribution, roadway conditions, and other traffic related characteristics.

If you have any questions or require additional information, please contact me at 974-3428.



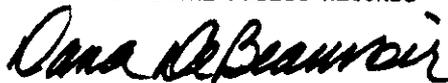
Amber Mitchell

Sr. Planner ~ Transportation Review Staff

City of Austin – Watershed Protection and Development Review Department

## FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



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DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS